IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 70 of 1985

with
INCOME TAX REFERENCE NO.71 OF 1985
WITH
INCOME TAX REFERENCE NO. 72 OF1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BELA TRUST AND OTHERS

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
MR JP SHAH for Petitioner
MR AKIL QUURESHI WITH MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 20/09/2000

ORAL JUDGEMENT

Per C.J:-

In these References, at the instance of the assessees, for assessment year 1980-81, the following common question of law has been referred:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust is liable to tax at the maximum marginal rate of income tax in view of amended provisions of proviso (ii) to section 164 (3) of the Income tax Act, 1961?'"

Learned counsel appearing for the assessees brings to our notice Division Bench decision of this court rendered on 10/12/1993 in the case of CIT vs. Deepak Family Trust, 211 ITR 575.

Learned counsel for the assessee submitted that the present assessee is undoubtedly a discretionary trust and on decision of Deepak Family Trust (supra) it has to be treated as an `individual'. If it is so treated as `individual', maximum marginal rate of tax may be levied under the proviso (ii) to section 164 (3) of the Act after allowing deduction for `individual' under section 80L of the Act.

Learned counsel appearing for the revenue in strongly opposing the submission made on behalf of the assessees, states that this court in a Reference under section 256 (1) of the Act cannot go into that question which does not directly arise from the order of the Tribunal and was never canvassed before the Tribunal or before any other or the authorities below.

As has been stated on behalf of the assessees, in view of the decision in Deepak Family Trust (supra), the actual tax liability of the assessee on due computation as individual ,may not be very substantial.

We do not think that in making reference to the Division Bench case in Deepak Family Trust (supra) and in answering the question on the basis of this subsequent development of law, we are going into some question which does not arise before us.

On the stand taken on behalf of the assessees, we would,therefore, answer the question against the assessees but leave the matter to the Tribunal to decide the question of actual computation of tax against the assessees bearing in mind the decision of the Division Bench in the case of Deepak Family Trust (supra).

At the instance of the learned counsel for the revenue, we make it clear that this order being passed in peculiar facts of the case, may not be cited as a precedent in regard to taking of the new plea on a question of law under section 256 of the Act.

References are accordingly disposed of but with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh